Supreme Court, U.S.
FILED
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No. _____

In the
Supreme Court of the United States

James Clifford Akins,

Petitioner,

vs.

State of Minnesota,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether a police officer may make a warrantless, non-consensual nighttime entry into a person's home to investigate a private citizen's report of bad driving behavior where the police officer neither has, nor believes he has, probable cause to believe the person has committed any crime.

II. Whether a police officer has a lawful basis to stop a car where, upon receiving a private citizen's report of bad driving conduct, the officer follows the car and sees no unlawful driving conduct nor observed anything else justifying a stop.

III. Whether forcing a person to relitigate an issue that has already been conceded by the state on appeal in an implied consent proceeding violates a person's federal right to due process.

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State of Minnesota

James Clifford Akins

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OPINIONS BELOW

The Minnesota Supreme Court denied Petitioner's Petition for further review in an Order opinion dated and filed April 25, 2000. The Minnesota Court of Appeals filed an unpublished decision on March 14, 2000, affirming the trial court's decision. The appeal to the Minnesota Court of Appeals followed the trial court's denial of petitioner's motions to suppress evidence and dismiss the charges, and the trial court's finding petitioner guilty of gross misdemeanor driving under the influence, careless driving, and obstructing legal process.

JURISDICTION

The order sought to be reviewed was entered in the Minnesota Supreme Court on April 25, 2000. Jurisdiction to review on a writ of certiorari the order in question is conferred by 28 U.S.C. §1257.

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment IV, United States Constitution

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . .

Amendment XIV, United States Constitution

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law. . .

STATEMENT OF THE CASE

In a criminal complaint dated June 9, 1998, petitioner James Clifford Akins was charged in Hennepin County District Court, State of Minnesota with one count of enhanced gross misdemeanor driving under the influence of alcohol, one gross misdemeanor count of driving under the influence of alcohol, one gross misdemeanor count of obstructing legal process, and one misdemeanor count of careless driving. Defendant filed a motion to suppress the state's evidence. A hearing was held and, on June 22, 1999, the Trial Court denied petitioner's motion. Defendant waived trial by jury and, also on June 22, 1999, the Court, on stipulated facts, found petitioner guilty on counts II, III, and IV (the trial court dismissed the enhanced gross misdemeanor charge.) On June 23, 1999, petitioner filed a notice of appeal to the Minnesota Court of Appeals.

In an Unpublished Opinion filed March 14, 2000, the Minnesota Court of Appeals affirmed petitioner's conviction. The Minnesota Supreme Court denied petitioner's Petition for Review on April 25, 2000.

On April 21, 1998, at about 8:25 p.m., Kristin Johnson was driving east on Highway 394 and was entering southbound Highway 169. A black BMW drove in front of her - cutting her off. The car drove on the curb.

In response, Ms. Johnson slowed her car. As the cars entered the 169 southbound ramp, she thought the black car "almost hit the cement barrier on the left hand side of the median." She saw the car speed up, slow down and drive "back and forth between lanes." Ms. Johnson called 911 because the black car had its flashers on. Ms. Johnson thought something was wrong with the person.

The 911 dispatcher asked Ms. Johnson to continue to follow the car. Ms. Johnson told the dispatcher the license number of the car. They turned west on Highway 62. At an intersection, they turned left and Ms. Johnson saw a police

squad car. She told the dispatcher about the police car, the dispatcher told her she could go ahead. She went straight and saw the car turn off to the left as she drove away.

The police car which followed the black car was driven by Trooper David Sutherland.

Sutherland had been driving south on Highway 169 when he heard an alert on his police radio about a "possibly impaired driver." He was later told the car was a black BMW with Minnesota license 335 FYL. Entering that information into the computer terminal in his car, Sutherland learned the description and address of the car's registered owner. As he sat stopped on the roadway shoulder, he saw the black car drive past him.

To investigate why the driver had been driving in the manner that had been reported, Sutherland followed the black car and turned on his red emergency lights but not his siren. He followed the black car for approximately two blocks. Sutherland said it "is neither usual or unusual" for a car to travel a couple of blocks before stopping for red lights. Sutherland testified he did not know whether the driver of the black car, petitioner, ever saw his red lights.

The black car turned right into the address of the home of the registered owner, petitioner. The garage door of the home was going up and the black car pulled into the garage. Sutherland testified he never personally observed "any inappropriate driving conduct." Sutherland parked his squad car in the driveway of petitioner's home.

Sutherland then got out of his car and walked into the garage. He testified that he got out of his car and went into the attached garage quickly in case the garage door was closing. The garage of petitioner's home is attached and part of the house. A diagram of the home and surrounding area was created at the Implied Consent hearing and was submitted to the trial court as part of the record.

Sutherland's stated purpose in going into the home was to investigate what he had been told concerning petitioner's

driving conduct. At the time he first entered the petitioner's house Sutherland testified he did not believe he had probable cause to arrest petitioner for DUI. He had not spoken with petitioner, and he had not observed the petitioner at all. Believing he lacked probable cause to arrest petitioner, Sutherland testified he wanted to talk to petitioner.

After entering his home, Sutherland spoke with petitioner, observed the odor of alcohol and asked Appellant to come out of his home and into the driveway. Petitioner complied. Shortly thereafter petitioner ran back into his house, through the garage area and into his living quarters. As petitioner ran back into his home, Sutherland first told him he was under arrest. There was a struggle and petitioner was handcuffed.

REASONS FOR GRANTING THE WRIT

This Court should grant the writ sought by Petitioner Akins because the Minnesota Supreme Court, by adopting the reasoning of the Minnesota Court of Appeals misapplied the Fourth Amendment's protection against unreasonable search or seizures in the curtilage of a person's home. This decision of the Minnesota Supreme Court is at odds with the applicable decisions of this Court.

The Minnesota Court of Appeals' decision is premised on the incorrect conclusion that Petitioner Akins did not have a reasonable expectation of privacy in a garage attached to his home. In its decision, the Minnesota Court of Appeals determined that state court decisions provide there is no expectation of privacy, and consequently police do not violate the Fourth Amendment by "going on to private property to investigate if they restrict their movements to places visitors would be expected to go, such as walkways, driveways or porches." According to the Minnesota Court of Appeals, these cases stand for the proposition that police should not be prevented from entering areas used by social visitors. The

Minnesota Court of Appeals opinion then recognizes that these decisions are "at odds" with the United States Supreme Court. As the Minnesota Court of Appeals recognized, those cases require a determination of whether an area is curtilage and, if so, affords the same protections as a person's home. See Oliver v. United States, 466 U.S. 170, 180 (1984).

The Minnesota Court of Appeals then states, incorrectly, that both analyses seek to determine whether a person has an expectation of privacy and uses the same factors. The Minnesota Court of Appeals, using the state court analysis, ultimately concluded that Akins did not have a reasonable expectation of privacy in his attached garage, because members of the public would assume they could use it. This conclusion is in conflict with established Supreme Court precedent which would provide that Akins was entitled to the same fourth amendment protection in his garage as he would be in his home. Clearly an attached garage is within curtilage for fourth amendment analysis, particularly when the officer entered a garage door that had been temporarily opened by the homeowner.

Even accepting the Minnesota Court of Appeals analysis, that Court still reached the wrong conclusion. Under this analysis, the Minnesota Court of Appeals concludes that Akins did not have an expectation of privacy in a garage attached to his house when the door is momentarily opened. Using that analysis, a person who opens his garage door in order to park his car and enter the living area of his home should expect members of the public to rush in under the closing door uninvited. This clearly is not, nor should it be, the state of the law.

The Supreme Court should grant review in order to harmonize Minnesota law with established Supreme Court precedent, and to determine whether a person has a reasonable expectation of privacy after pulling a vehicle into an attached garage.

The Minnesota Supreme Court's decision also conflicts with and improperly applies the law concerning when an officer has a sufficient basis to stop a driver based upon information from a private citizen. While information from private citizens is generally presumed reliable, "[s]ome tips, completely lacking in indicia of reliability, would either warrant no police response or require further investigation before a forcible stop of a suspect would be authorized." Adams v. Williams, 407 U.S. 143, 147, 92 S.Ct. 1921, 1923-24 (1972).

The Minnesota Court of Appeals Opinion, as adopted by the Minnesota Supreme Court, suggests that a citizen's report of erratic driving is sufficient to give an officer the lawful right to stop a driver regardless of what the officer himself sees.

The record in this case indicates that the officer did not have sufficient information to stop petitioner based upon the information from the private citizen and the officer's observations. The officer responded to a citizen report of an erratic driver. The private citizen, Ms. Johnson, called 911 and described Petitioner's driving and the location of his car. Ms. Johnson did not see or describe any alcohol use by Petitioner. It was apparently the 911 dispatcher, not the citizen, who characterized the person as a "possibly impaired driver."

Upon receiving the call, Trooper Sutherland began following Petitioner's car. The officer did not observe any erratic driving or traffic violations while he followed Petitioner's car. The only information the officer had concerning Petitioner was from Ms. Johnson. Despite this complete lack of verification of the caller's information, the officer activated his emergency lights and followed Petitioner.

On these facts, the information from the citizen caller, combined with the officer's observations, did not provide specific and articulable suspicion of a criminal violation. Although the information obtained by the officer may have

created the need for further investigation, once he investigated further by following the car and seeing no violation, he did not have a legal basis to stop Petitioner's car.

A final reason for granting the writ is that the decision of the Minnesota Supreme Court misapplied the due process clause of the fourteenth amendment to the United States Constitution by holding that forcing a person to relitigate an issue that has already been conceded by the state on appeal in an ancillary civil proceeding does not violate a person's right to due process. This Court has held that pursuant to the due process clause, criminal prosecutions must comport with prevailing notions of fundamental fairness. California v. Trombetta, 467 U.S. 479, 485, 104 S.Ct. 2528, 2532 (1984).

The Petitioner's Fourteenth Amendment right to due process has been violated because he has been forced to litigate the identical issue twice: in the ancillary civil implied consent hearing, and in the criminal case. In the implied consent case, the trial court denied Petitioner's motion to suppress evidence. The Petitioner appealed this decision to the Minnesota Court of Appeals. After Petitioner had filed his civil appeal, the state decided not to pursue the appeal and gave Petitioner everything he had requested in his Petition for Judicial Review.

The state then forced the Petitioner to make the same argument concerning the stop and seizure that was previously raised in the implied consent case and in Petitioner's initial civil appeal. The state forced the Petitioner to address this issue again, even though the state previously conceded to all of Petitioner's demands by determining not to pursue the appeal in the implied consent case. It is fundamentally unfair to force Petitioner to retry this issue in the instant case, when the State previously conceded the issue.

This second trial on the same issue this must be considered a due process violation because the state's action are fundamentally unfair to the Petitioner. It is outrageous for the state to force Petitioner to make the same arguments that

were previously conceded by the state in the implied consent case.

CONCLUSION

For the reasons set forth above, a Writ of Certiorari should be granted in this case.

Dated: July 25, 2000

Respectfully submitted,

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STATE OF MINNESOTA

IN SUPREME COURT

C4-99-1066

State of Minnesota,

Respondent,

vs.

James Clifford Akins,

Petitioner.

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of James Clifford Akins for further review be, and the same is, denied.

Dated: April 25, 2000

BY THE COURT:

/s/

Kathleen A. Blatz
Chief Justice

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (1998).

STATE OF MINNESOTA
IN COURT OF APPEALS
C4-99-1066

State of Minnesota,
Respondent,

vs.

James Clifford Akins,
Appellant.

Filed March 14, 2000
Affirmed and remanded for sentencing
Lansing, Judge

Hennepin County District Court
File No. 98068700

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Considered and decided by Halbrooks, Presiding Judge, Lansing, Judge, and Shumaker, Judge.

UNPUBLISHED OPINION

LANSING, Judge

On stipulated evidence, following denial of a suppression motion, the district court found James Akins guilty of gross misdemeanor driving under the influence, careless driving, and obstructing legal process. Akins appeals, arguing primarily that the district court erroneously denied his suppression motion and that therefore he is entitled to a new trial. Because the record establishes no constitutional or procedural error, we affirm.

FACTS

A Minnesota state trooper arrested James Akins after a sequence of events triggered by a citizen's 911 report of dangerously erratic driving. The citizen, driving home from work, reported by cell phone to a police dispatcher that a car driving alternately very fast and very slow was swerving from lane to lane in heavy traffic, only narrowly missing a median barrier and, with flashers activated, was driving on the shoulder of the road. The citizen later testified she thought the driver might have been having a seizure.

At the dispatcher's request, the citizen followed the car and remained in phone contact with the dispatcher until a state trooper, responding to the police dispatch, intercepted the cars. The trooper, with his red lights activated, followed the car for two blocks until it turned into a residential driveway. The trooper saw an overhead garage door open and the car pull into the garage.

The trooper drove into the driveway, parked behind the car, and walked through the open overhead door into the garage to ask the driver about his driving conduct. The trooper asked for Akins's license and, because he smelled the odor of alcoholic beverages, asked Akins how much he had to drink. Akins replied, "Too much," and the trooper asked

Akins to walk with him back to the squad. Akins had difficulty maintaining his balance as he followed the trooper. As the trooper began to explain the field sobriety tests he intended to conduct, Akins ran into the garage and toward a door within the garage that led to the residence. The trooper told Akins he was under arrest and ordered him to stop. The trooper followed Akins and, after a short struggle inside the house, subdued Akins and then transported him to the Eden Prairie police station. Akins completed a chemical test that disclosed a .24 blood-alcohol concentration.

The district court denied Akins's motion to dismiss the complaint and to suppress evidence obtained as a result of his seizure and arrest. Akins appeals, contending that (1) the trooper violated his Fourth Amendment rights by the warrantless entry into his garage, (2) the trooper violated his Fourth Amendment rights because the trooper did not have an articulable basis to stop Akins's car, and (3) the state violated his due-process rights by forcing him to relitigate an issue previously conceded by the state in the implied-consent proceeding.

DECISION

I

When reviewing a search or seizure challenge under the Fourth Amendment to the United States Constitution, the reviewing court may independently analyze undisputed facts to determine, as a matter of law, whether evidence resulting from the search or seizure should be suppressed. *State v. Othoudt,* 482 N.W.2d 218, 221 (Minn. 1992). To claim the protection of the Fourth Amendment, a defendant must demonstrate that he personally has an expectation of privacy in the place where the search or seizure occurred and that society recognizes his expectation as reasonable. *Minnesota v. Carter,* 525 U.S. 83, __, 119 S. Ct. 469, 473 (1998).

The Fourth Amendment protects against unreasonable searches and seizures in a person's home and its curtilage. *U.S. v. Dunn,* 480 U.S. 294, 300, 107 S. Ct. 1134, 1139 (1987). In determining whether an area is within the curtilage, the Supreme Court considers four factors: (1) the proximity of the area to the house; (2) whether the area is included within an enclosure surrounding the home; (3) the nature of the uses of the area; and (4) the steps taken by the resident to protect the area from observation by people passing by. *Id.* at 301, 107 S. Ct. at 1139. These four factors "bear upon whether an individual reasonably may expect that the area in question should be treated as the home itself." *Id.*

In two cases, Minnesota appellate courts have held that curtilage includes the garage. *State v. Crea,* 305 Minn. 342, 345, 233 N.W.2d 736, 739 (1975); *Tracht v. Comm'r of Pub. Safety,* 592 N.W.2d 863, 865 (Minn. App. 1999), *review denied* (Minn. July 28, 1999). But in both *Crea* and *Tracht,* the courts further hold that police did not violate the Fourth Amendment when, for legitimate business reasons, they entered areas of the curtilage that were impliedly open to the public. *Crea,* 305 Minn. at 346, 233 N.W.2d at 739 (police conducting an investigation may walk on the sidewalk and onto porch of house and are free to make observations); *Tracht,* 592 N.W.2d at 865 (police entry into open garage to knock on residence door equivalent to entry into porch).

State courts interpreting the Fourth Amendment have generally recognized that police do not violate the Fourth Amendment by going on private property to investigate if they restrict their movements to places visitors would be expected to go, such as walkways, driveways, or porches. 1 Wayne R. LaFave, *Search and Seizure* § 2.3(f), at 507-08 (1996); *see also State v. Ryea,* 571 A.2d 674, 675 (Vt. 1990) (curtilage providing normal access for visitors is not entitled to absolute protection under Fourth Amendment); *State v. Seagull,* 632 P.2d 44, 47 (Wash. 1981) (presence of officer within curtilage is not per se Fourth Amendment violation);

In re Gregory S., 169 Cal. Rptr. 540, 546 (Cal. App. 1980) (no Fourth Amendment violation when officer enters area where public is implicitly invited). The state court decisions rely on the principle that police should not be prevented from entering the areas used by social visitors in which people do not usually have a reasonable expectation of privacy. *See People v. Thompson*, 270 Cal. Rptr. 863, 873 (Cal. App. 2d 1990) (no reasonable expectation of privacy in areas where public has been implicitly invited); *Seagull*, 632 P.2d at 47 ("[a]n officer is permitted the same license to intrude as a reasonably respectful citizen") (citation omitted).

The state court cases that suspend Fourth Amendment protections in areas of curtilage used for public access appear to be at odds with the Supreme Court's curtilage analysis, which inquires whether an area is within curtilage and, if so, affords it the same protection as the house itself. *See Oliver v. United States*, 466 U.S. 170, 180, 104 S. Ct. 1735, 1742 (1984) (curtilage considered part of home for Fourth Amendment purposes). But because both analyses ultimately seek to determine whether a person has a reasonable expectation of privacy in an area, the varying analytical approach is not legally significant. The factors of the analysis are the same; only the order in which the factors are applied varies. *Compare Dunn*, 480 U.S. at 300, 107 S. Ct. at 1139 (determination of *whether area is curtilage* depends upon reasonable expectations of privacy), *with Thompson*, 270 Cal. Rptr. at 873 (determination of *whether curtilage is protected* depends upon reasonable expectations of privacy).

Akins argues that the reasoning in *Crea* and *Tracht* does not apply in this case because his garage is attached and integrated into the architecture of his house in a way that the garage in *Crea* and *Tracht* were not. We do not see an adequate distinction between the *Crea-Tracht* facts and the facts in this case to justify a different result.

In *Crea*, the garage was not attached to the house, but the court also considered whether the police could look into a

walk-in basement. 305 Minn. at 346, 233 N.W.2d at 740. The police in *Crea* walked on the driveway and in other areas within the curtilage. *Id.* at 343-44, 233 N.W.2d at 738. The *Crea* court focused on whether the police were entering into areas of the curtilage "impliedly open to use by the public." *Id.* at 346, 233 N.W.2d at 739. In *Tracht,* the garage was attached to the house and, like Akins's garage, had a door between the house and the garage. 592 N.W.2d at 865. And in *Tracht,* as in this case, the garage had a large overhead door that was open when the police entered. *Id.* People's expectations for access areas of their premises commonly differ from their expectations for more secluded areas. *State v. Corbett,* 516 P.2d 487, 490 (Or. Ct. App. 1973). In the course of urban life, members of the public, including neighbors, friends, postal workers, newspaper deliverers, and salespeople, commonly approach doorways that are the obvious points to gain access to the living quarters. *Id.*

We conclude that Akins did not have a reasonable expectation of privacy in the garage, with its overhead door open, that would require the trooper to stop at its threshold and obtain a warrant before questioning him. The garage may not be the usual means of access to a home. But members of the public would reasonably assume that they could use it, when the overhead door was open, to talk to a resident who himself is using the garage as a means of access. Police may reasonably do the same. The holding of *Tracht* applies to the facts of this case, and the trooper's warrantless entry into the garage did not violate Akins's Fourth Amendment rights.

Parenthetically, we note that a number of jurisdictions would find that the officer's entry into the garage did not violate the Fourth Amendment even if Akins had a reasonable expectation of privacy in his garage. These jurisdictions hold that police may enter a home to complete a lawful investigative stop when the stop is initiated in a public place but the suspect flees inside the home before the stop can be completed. *See Alto v. City of Chicago,* 863 F. Supp. 658,

661-62 (N.D. Ill. 1994) ("an officer who stops a person because of a reasonable, articulable suspicion of criminal activity need not terminate the stop merely because the suspect flees to his home") (citations omitted); *Harbin v. City of Alexandria,* 712 F. Supp. 67, 71-72 (E.D. Va. 1989) *(Terry* stop need not end when suspect walks from porch into house), *aff'd,* 908 F.2d 967 (4th Cir. 1990); *People v. Riviera,* 598 N.E.2d 423, 427 (Ill. App. 2d 1992) (police authorized to make warrantless entry if they have lawful basis for stop and suspect reacts by fleeing to a private sanctuary); *Edwards v. United States,* 364 A.2d 1209, 1214 (D.C. 1976) (officers did not violate Fourth Amendment by following suspects into apartment to complete *Terry* stop initiated on the street), *on reh'g,* 379 A.2d 976, 978 (D.C. 1977) (upholding entry on probable cause grounds); *cf. United States v. Santana,* 427 U.S. 38, 43, 96 S. Ct. 2406, 2410 (1976) (suspect may not defeat arrest set in motion in public place by escaping into private place).

This reading of the Fourth Amendment has, however, elicited a substantive split of authority. *See State v. Beavers,* 859 P.2d 9, 17 (Utah Ct. App. 1993) (rejecting extension of Terry doctrine as contrary to Fourth Amendment principles); *State v. Davis,* 666 P.2d 802, 812 (Or. 1983) (declining to hold that reasonable suspicion sufficient to support temporary detention can support warrantless entry of premises). Because we find that Akins did not have a reasonable expectation of privacy in his open garage, we need not determine whether a warrantless entry for the purpose of completing an investigative stop that began in a public place is reasonable under the Fourth Amendment.

II

We reject Akins's claim that the officer lacked an articulable basis to stop his car. We note initially that it is not a seizure for an officer to talk to a driver who is seated in a

parked vehicle. *State v. Vohnoutka,* 292 N.W.2d 756, 757 (Minn. 1980). But even if an articulable basis were required for the trooper's approach or questioning of Akins, the record amply supports the district court's determination that the citizen's report provided a reasonable articulable basis for the stop. *See Marben v. State, Dept of Pub. Safety,* 294 N.W.2d 697, 699 (Minn. 1980) (stop must be based on articulable suspicion of traffic violation).

The citizen who observed Akins's driving identified herself; told the dispatcher the make, model, and license number of Akins's car; and described Akins's erratic driving as she witnessed it. The dispatcher relayed the information to the trooper who apprehended Akins. The citizen also testified at the implied-consent hearing. These facts more than sufficiently establish a reasonable articulable suspicion that would justify a stop. *See Marben,* 294 N.W.2d at 699 (specific and articulable suspicion to justify a stop may be provided by anonymous citizen's tip when police verify that tipper is in area and close to vehicle).

III

We also reject Akins's claim that requiring him to relitigate the same issues in this criminal proceeding that were previously litigated in the implied-consent proceeding violates due process and is fundamentally unfair. Essentially, Akins is arguing for application of collateral estoppel. Collateral estoppel does not apply, however, between civil implied-consent cases and subsequent criminal cases because the cases involve different parties with different interests. *See State, Dep't of Pub. Safety v. House,* 291 Minn. 424, 425, 192 N.W.2d 93, 94 (1971) (DWI proceedings and implied-consent proceedings are separate actions involving separate parties); *State v. Juarez,* 345 N.W.2d 801, 802-03 (Minn. App. 1984) (noting that the State of Minnesota and the Commissioner of Public Safety are neither the same parties nor parties in

privity). Furthermore, the overlapping issues, although dismissed prior to appeal, were decided against him in the district court proceedings.

IV

Finally, we note that although the district court determined Akins's guilt, the court deferred sentencing until conclusion of the appeal, and thus there has not been an appealable final judgment. *See* Minn. R. Crim. P. 28.02, subd. 2(2) (defendant may not appeal until final judgment entered, and judgment is final when sentence imposed or imposition stayed). Despite the absence of a sentence, both parties have proceeded in this appeal as if the court had not only completed adjudication, but also sentencing. Consequently, we have granted discretionary review under Minn. R. Crim. P. 28.02, subd. 3, in the interest of justice that is obtained through orderly and timely review. *See State v. Soyke*, 585 N.W.2d 418, 420 (Minn. App. 1998) (allowing discretionary review when record fully developed and issue fully briefed).

Affirmed and remanded for sentencing.

s/ Harriet Lansing
March 6, 2000

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

State of Minnesota,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	SIP No. 98068700
	)	
James Clifford Akins,	)	GROSS MISDEMEANOR
	)	
Defendant.	)	

The above-entitled matter came duly on for hearing before The Honorable Philip D. Bush, one of the Judges of the above-named Court, on June 22, 1999, in a courtroom at the Hennepin County Government Center, in the City of Minneapolis, State of Minnesota.

APPEARANCES

James W. Delaplain, Attorney at Law, appeared on behalf of the City of Eden Prairie and the State of Minnesota.

Andrew Birrell, Attorney at Law, appeared on behalf of the defendant.

The defendant appeared in person.

CLERK: Patti Martin

COURT REPORTER: Sandra K. Helget

WHEREUPON, the following proceedings were duly had:

(1:37 p.m.)

THE COURT: This is State of Minnesota versus James Clifford Akins, A-K-I-N-S. Court file is 98068700. If counsel would note their appearances for the record.

MR. DELAPLAIN: Good afternoon, Your Honor, James Delaplain for the City of Eden Prairie, State of Minnesota.

MR. BIRRELL: Andy Birrell, B-I-R-R-E-L-L, for Mr. Akins, who's present before the Court.

THE COURT: The matter was on the trial calendar last week. The issue of probable cause to arrest and suppression motions were filed with memorandum on both sides. We took testimony last week, and there's not a dispute as to the facts, and the record establishes -- from the testimony last week establishes pretty clearly the factual history in this case where a citizen driver observed erratic driving behavior on April 21st of 1998 and called in on a cell phone, the police dispatcher, followed the vehicle until it was intercepted by a State Highway Patrol. It was a known citizen driver that was available to the police and actually, parenthetically, testified at the hearing, and the driver stayed in contact with the vehicle until it was a hand-off to the state trooper and described the erratic driving behavior. Trooper turned on his lights. The car went a couple more blocks and pulled into the driveway and then the garage of his home. The trooper went into the open door of the driveway -- into the driveway and then into the open door of the garage, asked Mr. Akins to come back to the car.

Mr. Akins did come back to the car after indicia of alcohol were noticed by the trooper at that point. Mr. Akins

then left and went into the house, was told to stop by the officer. He did not stop. The state trooper pursued him into the house, struggle ensued, and ultimately Mr. Akins was arrested.

So the issues for the motion to suppress were, first, a probable cause to stop, and then there was also probable cause to enter the house or challenges to enter the house and -- and then due process in terms of -- the third issue raised by the defense was due process with respect to the implied consent hearing, litigating duplicative issues, and I had already ruled on the implied consent earlier.

It's my -- I've read the case law that both sides had submitted and first of all, with respect to whether there was probable cause for the officer to stop and investigate further, City of Minnetonka versus Shepherd, which is found at 420 Northwest 2d, 887, a State of Minnesota Supreme Court decision that analyzes the -- essentially the trio of cases up to that point on probable cause to stop based on a tip from a citizen, and it's clear to me in reading the three cases that they cite as well as the Shepherd analysis of those three cases that there was probable cause for the officer to stop after receiving the citizen call and being sure that he had the same car that the citizen had called about. Even though he did not see any erratic driving behavior on his own, there was a sufficient basis to stop. As I told counsel in chambers, if the officer turned on his lights or -- turned on his lights where he did and if Mr. Akin had pulled over immediately to the curb right at that point and then there was an arrest for drunk driving after the requested field sobriety, et cetera, and other information was gained, that would have been a valid stop and a valid arrest, if it all occurred in a public place. Here it's a known informant who was available, clearly gave their name. Citizen informants are presumed reliable, that there is a low threshold for stopping a vehicle, it just cannot be on whim. Clearly it was not on officer's whim in this case but based on reliable information.

The offense, under the statute and the case law, does not have to be committed in the officer's presence for the traffic stop. The only case where there was an oppression based on a tipster within this group is Olson v. Commissioner of Public Safety, a 1985 case where it was an unidentified person saying it was somebody -- a particular car was probably a drunk driver. Here substantially more than that. We had an identified tipster with a lot more information, and it falls much closer to Marda, Davis and the facts in Shepherd, so there was probable cause to stop the vehicle, whether it be on the road or to follow the vehicle when it pulled into its driveway and then into the garage.

The other question then is whether the officer could have pursued into the house, and that -- probably the leading case on that is the United States Supreme Court case United States versus Santana, found at 96 Supreme Court 2406, a 1976 Minnesota -- United States Supreme Court case, and there the Supreme Court concluded that, quote, "A suspect may not defeat an arrest which has been set in motion in a public place and which is therefore proper under Watson by the expedient of escaping to a private place." And that appears to be exactly the circumstances here of going from a public place where the officer had the authority to stop and investigate further and not stopping for the officer and going into a private or semi-private place in terms of a garage since it was open.

I'm not -- we're not on the identical facts of the recent Court of Appeals decision in Tract versus Commissioner of Public Safety, which came down on April 20th of 1999, was an open garage that was generally open, the police came up and walked in. Here the garage was opened, and it's unclear whether there was a general invitation for the public to come into the garage or use it to go up to the door just as if it were a front porch, but I don't think that fact needs -- or that question needs to be decided in this case because the officer had the authority to pursue into that private space given the lawful authority the officer had to stop Mr. Akins' car.

While in that space there was not a seizure. It was a request for Mr. Akin to return -- or to come outside for further investigation and testing. He complied with that. There was not a seizure within -- even if it was a private space, there was not a seizure or arrest within the private space. Mr. Akin came outside. The officer further developed probable cause to make an arrest for alcohol traffic, and then Mr. Akin fled into the house. And the officer, while he was in a public place, ordered him to stop, told him he was under arrest, and he was fleeing, and clearly under the case law the officer had the authority to pursue him back into the house to effectuate a lawful arrest for which there was probable cause.

So on all bases the motion -- both requests for the motion to suppress will be denied. Mr. Birrell --

MR. BIRRELL: Yes.

THE COURT: -- do you wanted to proceed?

MR. BIRRELL: Following up on our conversation in chambers, it's my understanding that we would be in agreement about the procedure to be followed, which would be that Mr. Akins would execute the necessary waivers so we could try the case on stipulated facts to the Court. If there was a finding of guilt, then a sentencing would be deferred so that we could have the matter reviewed by the Court of Appeals. And if that's the understanding, I'm prepared to put the waivers on the record.

THE COURT: And the facts that will be stipulated to would be the facts as alleged in the complaint, is that --

MR. BIRRELL: That would be all right --

THE COURT: -- your understanding?

MR. BIRRELL: -- Your Honor.

MR. DELAPLAIN: The city has no objection, Your Honor.

THE COURT: Okay. I'm not -- on the table there there sometimes is a stack of waiver -- jury trial waiver forms. I don't know if there's one there or I need to get one from Patti.

MR. BIRRELL: I don't see one. I could do it on the record if you want.

THE COURT: We can do it on the record. We will get a form from Patti because the statute requires a written waiver, but we certainly want to inquire.

MR. BIRRELL: I don't see one, so why don't we just get the form.

THE COURT: Okay.

MR. BIRRELL: Can I have the case number?

THE COURT: Case number is 98068700.

MR. BIRRELL: Mr. Akins, have you been present in court and heard the proposed procedural resolution of this matter?

THE DEFENDANT: I have.

MR. BIRRELL: And you understand that you have a right to have a trial by a jury in this matter?

THE DEFENDANT: Yes.

MR. BIRRELL: And that as part of our proposed disposition you would be giving up your right to have a jury trial?

THE DEFENDANT: Yes.

MR. BIRRELL: Okay. And at any trial you have certain rights that I'm going to talk to you about. First of all, you have the right to have witnesses come in and testify in your presence. You understand that?

THE DEFENDANT: Yes.

MR. BIRRELL: You have the right to cross-examine, which means ask questions of the witnesses who testify in your presence. You understand that?

THE DEFENDANT: Yes.

MR. BIRRELL: You have the right to require anybody that you want to come in and testify to do that?

THE DEFENDANT: Yes.

MR. BIRRELL: You have the right to testify if you want to; if you don't want to, no one can make you, and no one can say anything about that fact.

THE DEFENDANT: Yes.

MR. BIRRELL: Okay. You have the right to make both an opening and closing argument or have me do that for you.

THE DEFENDANT: Yes.

MR. BIRRELL: Okay.

THE DEFENDANT: Can we go off the record for just one second and I ask a private question --

THE COURT: Sure, absolutely.

THE DEFENDANT: -- of my counsel?

(Discussion off the record from 1:50 to 1:51 p.m.)

MR. BIRRELL: You have -- have I answered your question fully?

THE DEFENDANT: You have.

MR. BIRRELL: Do you have any other questions that you want to ask me or His Honor, Judge Bush, about any of your other rights?

THE DEFENDANT: No.

MR. BIRRELL: I'm showing you a document entitled "Waiver of a Jury Trial." There is a signature line above the word "defendant." Would you please sign that so the Judge can see it?

THE DEFENDANT: Okay.

MR. BIRRELL: I would offer the written waiver of jury trial along with the other waivers.

THE COURT: I will approve the waiver of the jury trial of this matter, and both sides agree that the trial will

be on the facts as alleged in the complaint except that count 1, the enhanced gross misdemeanor, has been struck down as unconstitutional, as an improper statute by the legislature under the constitution, so there will be a trial on Counts 2, 3 and 4 for purposes of today's hearing. Is that everybody's understanding?

MR. DELAPLAIN: That's my understanding, Your Honor.

MR. BIRRELL: Yes, it is, Your Honor.

THE COURT: I find there is proof beyond a reasonable doubt with respect to all three counts that Mr. Akins was operating a motor vehicle in the -- in Hennepin County, in the Eden -- in the Eden Prairie community of Hennepin County on April 21st of 1998 and that within two hours of operating that vehicle there was a blood test -- an alcohol testing result that showed a .24 blood alcohol concentration, which is contrary to Minnesota Statute -- contrary to Minnesota Statutes.

I also find, given the allegations and the information in the complaint, based on the civilian witness, there is sufficient proof beyond a reasonable doubt of careless driving and, based on the complaint, sufficient proof for obstructing legal process as a gross misdemeanor, and it's my understanding the matter -- clearly the trial on stipulated facts was done to allow an appeal.

Mr. Birrell, I'm -- since I am on the receiving and not on the -- or my -- I receive cases from the trial calendar but I'm done with them here, the time frame for filing the appeal is what? Is it 30 or 60 on a criminal case at this point?

MR. BIRRELL: I believe it's 90 days. I will file it tomorrow.

THE COURT: All right. What I will do is defer sentencing until an appeal is decided on this matter. Once an appeal is either decided or if it is dismissed for some reason or whenever the appeal process is closed, both parties should notify my office within seven working days of the resolution of the appeal. And if the appeal is successful by the defense, then we will enter that into the court records and close the case. If it is not successful, then a sentencing will be scheduled.

Between now and sentencing, Mr. Akin, I'm not going to require -- you're going to remain out of custody. The condition is that you have no drug- or alcohol-related traffic offenses while this appeal and -- while we are awaiting the sentencing on this matter. If there is an alcohol- or drug-related traffic offense or a driver's license violation, operating a vehicle outside of the requirements or the permission granted by the driver's license, then the matter will come back in front of me for sentencing and we are not going to wait until the appeal is finished, but --

THE DEFENDANT: I understand.

THE COURT: -- the condition of no drug or alcohol offenses and no driver's license violations. I don't know what the status of your license is. If it's valid, you can drive anywhere --

THE DEFENDANT: It's valid.

THE COURT: Okay. When you -- as long as it's valid and stays valid, you can drive anywhere under the terms and conditions. If it's not valid, then you can't be driving, and certainly you can't be driving under the influence of alcohol.

THE DEFENDANT: Appreciate you doing this, and I won't embarrass you. You won't see me back here.

THE COURT: Okay. We will see you back --

THE DEFENDANT: Well --

THE COURT: Unless it's necessary, unless it's necessary.

THE DEFENDANT: Yes.

THE COURT: All right, okay.

MR. BIRRELL: Thank you, Your Honor.

MR. DELAPLAIN: Thank you, Your Honor.

THE DEFENDANT: Thank you, Your Honor.

(Adjourned at 1:56 p.m.)

Supreme Court, U.S.
FILED
AUG 28 2000
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(2)

No. 00-147

In the
Supreme Court of the United States

James Clifford Akins,

Petitioner,

vs.

State of Minnesota,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Respondent disagrees with Petitioner's statement of the legal issues presented for review. The issues considered by the Minnesota Court of Appeals were as follows:

> Whether a person's right under the Fourth Amendment to be free from unreasonable search and seizure is violated when an officer enters the person's open garage to speak to the person therein who had driven into the garage during the course of an otherwise valid stop by the officer?

> Whether an officer has Constitutional grounds to stop a vehicle based on the report of an identified citizen caller contemporaneously relaying observations of bad driving conduct of the vehicle to the officer through his dispatcher?

> Whether a person's right to due process under the Fourteenth Amendment is violated by a criminal prosecution subsequent to a civil implied consent proceeding?

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent State of Minnesota respectfully requests that this Court deny the Petition for Writ of Certiorari seeking review of the decision of the Minnesota Supreme Court.

OPINIONS BELOW

By order opinion dated and filed April 25, 2000, reprinted in the Appendix to the Petition at A-1, the Minnesota Supreme Court denied Petitioner's Petition for Further Review of an unpublished decision of the Minnesota Court of Appeals. The Minnesota Court of Appeals opinion, reprinted in the Appendix to the Petition at A-2 to A-10, was filed March 14, 2000, affirming the trial court's decision. The trial court, by order dated June 22, 1999, denied Petitioner's motion to suppress evidence and found Petitioner guilty of gross misdemeanor driving under the influence, careless driving, and obstructing legal process. The trial court's opinion is reprinted in the Appendix to the Petition at A-11 to A-21.

JURISDICTION

Petitioner invokes the jurisdiction of this Court pursuant to 28 U.S.C. Section 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment IV, United States Constitution

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizures, shall not be violated....

Amendment XIV, United States Constitution

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law

STATEMENT OF THE CASE

The facts of the case are fairly stated in the decision by the Minnesota Court of Appeals, reprinted at the Appendix to the Petition at A-2 to A-10. The following more complete statement of the facts is adapted from Respondent's Brief to the Minnesota Court of Appeals, with citations to the record omitted.

Ms. Johnson, a private citizen, testified that on April 21, 1998 at approximately 8:25 p.m., she was traveling in the far right-hand lane of Interstate 394. As she entered the southbound 169 ramp, a black BMW came all the way from the left-hand lane and "cut her off." The BMW almost hit a cement barrier as it went up on the ramp. The BMW was traveling very fast and then slowed to between 30 and 40 miles per hour at the top of the ramp. There was "tons" of traffic on 169 and the BMW swerved back and forth between lanes, sometimes on the shoulder, then it almost hit a barrier on the left-hand side of the median. The BMW drove almost on the shoulder with its flashers on, then swerved back in front of her to the left lane. Ms. Johnson called 911 because she believed something was wrong with the driver of the BMW, and feared that the driver might be having a seizure.

Ms. Johnson described to the 911 dispatcher the driving behavior she had witnessed. The dispatcher asked Ms. Johnson to follow the vehicle. As she followed, Ms. Johnson provided periodic updates to patrol dispatch. She provided the dispatcher with her name as well as the license number of

the BMW. Eventually, while she and the BMW were in the left-hand turn lane to Baker Road, Ms. Johnson saw a patrol car pass. She was still on the phone with the dispatcher and advised that she saw the patrol car. The dispatcher informed her that the officer saw her and the BMW and that she could go.

Minnesota State Trooper Sutherland was dispatched to respond to Ms. Johnson's 911 call. Dispatch advised him of a possible impaired driver who was weaving from side to side in both lanes. He was informed that the name and telephone number of the 911 caller had been obtained. He was given a description of the driving behavior, and the license number of the BMW. The Trooper proceeded with red lights and siren until he passed both the BMW and Ms. Johnson's vehicle as they were waiting to make the left-hand turn onto Baker Road. When dispatch advised him that he was passing the vehicles, the Trooper pulled over to the right shoulder of Baker Road. When the BMW completed its turn, the Trooper pulled in behind the BMW and activated his red lights. The BMW continued approximately two blocks, then turned into the driveway of a residential address. The overhead garage door opened, and the BMW pulled into the garage.

The Trooper drove his patrol car into the driveway and parked. The Trooper then walked into the garage through the open garage door and initiated conversation with the driver of the BMW, Petitioner, who was still seated in his vehicle. At the time he entered the garage, the Trooper did not believe he had probable cause to arrest Petitioner for DWI. The Trooper did not observe any inappropriate driving conduct himself, other than Petitioner not pulling over for the red lights. The Trooper approached Petitioner to "ask him why the driving conduct -- uh, the way it was the 911 caller giving it out, whether the driver was impaired or having a medical problem."

The Trooper asked Petitioner for his driver's license, and explained to Petitioner why he had stopped him. The Trooper

asked Petitioner how much he had to drink, and Petitioner replied, "too much." The Trooper asked Petitioner to return to the patrol car. Petitioner agreed and both the Petitioner and the Trooper returned to the patrol car, which was outside of the garage.

Both at the time the Trooper spoke with the Petitioner inside the garage and at the patrol car outside the garage, the Trooper detected a strong to moderate odor of consumed alcoholic beverages on the Petitioner's breath. When initially exiting his vehicle, Petitioner lost his balance "a little bit." He swayed as he walked back to the patrol car, and was unable to stand upright without leaning against the patrol car while the Trooper was explaining the standardized field sobriety tests.

As the Trooper was explaining the field sobriety tests, the Petitioner turned and ran toward his garage and headed to the door inside the garage leading to his residence. As Petitioner fled, the Trooper ordered him to stop and informed him that he was under arrest. The Trooper pursued Petitioner to the doorway of the residence and attempted to stop Petitioner as he was about to enter the residence. However, the Trooper was unable to prevent Petitioner from dragging himself and the Trooper through the doorway and into the residence. Once inside, a struggle ensued, after which Trooper Sutherland was able to complete the arrest and apprehension of Petitioner.

Petitioner was transported to the Eden Prairie Police Department where he was read the Minnesota Implied Consent Advisory, and was asked to provide a sample of his breath for testing, which he agreed to do, resulting in a blood alcohol concentration reading of .24. Petitioner was charged with gross misdemeanor driving under the influence, careless driving, and obstructing legal process.

Petitioner's driving privileges were revoked pursuant to Minnesota's civil implied consent law, Minn. Stat. § 169.123 (1996). Petitioner petitioned for judicial review of his

driver's privilege revocation alleging that the evidence of the intoxilyzer results should be suppressed for the same Constitutional grounds asserted in the present petition. The matter came on for hearing on September 16, 1998. The Trooper and the 911 caller testified on behalf of the State. By Order dated October 29, 1998, the court held that the Trooper had probable cause to arrest the Petitioner, and that the Trooper's entry into the Petitioner's garage was legal. (Hennepin County Minnesota District Court File No. 475960.)

Petitioner appealed that Order to the Minnesota Court of Appeals. Prior to briefing the matter, the Minnesota Commissioner of Public Safety entered into a stipulation of voluntary dismissal with Petitioner and administratively rescinded the revocation of Petitioner's driving privileges. The Minnesota Court of Appeals dismissed that appeal by Order dated January 14, 1999. (Minnesota Court of Appeals File No. C3-98-2103.)

Petitioner then brought motion to the criminal court, seeking dismissal of the Complaint and suppression of the intoxilyzer evidence based on the alleged Constitutional violations. A pre-trial suppression hearing was held in Hennepin County District Court on July 6, 1999. The trial court denied Petitioner's motion to suppress and dismiss. The Trial Court then adjudicated Petitioner guilty upon the stipulated facts contained in the Complaint.

Respondent believes that Petitioner's statement of the case contains some confusing references to the trooper going into the "home" and "house" that should be corrected. Page 3 of Petitioner's Brief states:

> "Sutherland's stated purpose in going into the home was to investigate what he had been told concerning petitioner's driving conduct. At the time he first entered the petitioner's house Sutherland testified..."

What is confusing about this statement is that, in reality, it refers to Trooper Sutherland entering the open garage, not the home. Additionally, on page 4, Petitioner states:

> "After entering his home, Sutherland spoke with petitioner, observed the odor of alcohol and asked Appellant [sic] to come out of his home and into the driveway. Petitioner complied. Shortly thereafter petitioner ran back into his house, through the garage area and into his living quarters. . . ."

Again, the reference here to entering the home, and Petitioner coming out of his home, are references to Petitioner's open garage.

REASON FOR DENYING THE WRIT

The reasons why the Supreme Court should deny the Petition in this case are as follows:

A. The Petition was Untimely

The Minnesota Supreme Court's Order denying Petitioner's request for further review was filed April 25, 2000. Under Supreme Court Rules 13(1) and 30(1), a timely Petition to this Court was required to be filed, at the latest, on July 24, 2000. The Petition for Writ of Certiorari to this Court was served and filed via U.S. Mail on July 25, 2000. Service was 91 days after entry of the order by the Minnesota Supreme Court denying further review.

Rule 13(1) of the Supreme Court Rules Provides, in relevant part: "A petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review." Sup. Ct. R. 13(1).

Rule 30(1) of the Supreme Court Rules Provides, in relevant part: "In the computation of any period of time prescribed or allowed by these Rules ... the day of the act, event, or default from which the designated period begins to run is not included. The last day of the period shall be included..." Sup. Ct. R. 30(1).

Excluding April 25, 2000, the day of the act that began the running of the period, the last day of the 90 day period was July 24, 2000. This Court should either decline jurisdiction, or deny the untimely Petition.

B. The Minnesota Court of Appeals' decision does not conflict with relevant decisions of the Supreme Court

The only grounds relied upon by Petitioner in requesting that this Court grant review is that "[the] decision of the Minnesota Supreme Court is at odds with the applicable decisions of this court." (Pet. at 4.) This is not accurate. The Minnesota Court of Appeals' decisions on each of the three issues for which Petitioner seeks a writ do not conflict with relevant decisions of this Court. Indeed, all grounds for the Minnesota Court of Appeals decision are consistent with the decisions of this Court. Accordingly, the petition for writ of certiorari should be denied.

This Court will grant a writ of certiorari to review a state court judgment only for compelling reasons, such as where a state court has decided an important federal question in a way that conflicts with the relevant decisions of this court. S. Ct. R. 10(c). A petition for writ is rarely granted when the asserted error consists of the misapplication of a properly stated rule of law. S. Ct. R. 10.

1. The Minnesota Court of Appeals' Holding that Petitioner did not Have a Legitimate Expectation of Privacy in his Open Garage does not Conflict with Relevant Decisions of this Court

Petitioner argues that the Court of Appeals was erroneous in holding that police do not violate the Fourth Amendment by "going onto a private property to investigate if they restrict their movements to places visitors would be expected to go, such as walkways, driveways, or porches." (Pet. at 4.) However, the Minnesota Court of Appeals decision is consistent with accepted principle of Constitutional law reflected in prior decisions of this Court.

The decision of the Minnesota Court of Appeals correctly states that "[to] claim the protection of the Fourth Amendment, a defendant must demonstrate that he personally has an expectation of privacy in the place where the search or seizure occurred and that society recognizes his expectations as reasonable." (App. to Pet. at A-4) (quoting Minnesota v. Carter, 525 U.S. 83, 88, 119 S.Ct. 469, 473 (1998)). In determining that Petitioner did not have a legitimate expectation of privacy in his open garage, the Minnesota Court of Appeals cited a Minnesota Court of Appeals decision exactly on point, Tracht v. Commissioner of Public Safety, 592 N.W.2d 863 (Minn. App. Apr. 20, 1999), rev. denied (Jul. 28, 1999). The Tract decision, for its part, relied upon Katz v. United States, 389 U.S. 347, 88 S.Ct. 507 (1967), for the proposition that "what a person knowingly exposes to the public, even in his own home...is not subject to Fourth Amendment protection. See Tracht, 592 N.W.2d at 865 (quoting Katz, 389 U.S. at 351, 88 S.Ct. at 511.)

The Minnesota Court of Appeals, in the present matter, held:

> We conclude that Akins did not have a reasonable expectation of privacy in the garage, with its

> overhead door open, that would require the trooper to stop at its threshold and obtain a warrant before questioning him. The garage may not be the usual means of access to a home. But members of the public would reasonably assume that they could use it, when the overhead door was open, to talk to a resident who himself is using the garage as a means of access. Police may reasonably do the same. The holding of Tracht applies to the facts of this case, and the trooper's warrantless entry into the garage did not violate Akins' Fourth Amendment rights.

(App. to Pet. at A-7.)

The decision acknowledges that under Minnesota law, the garage is considered curtilage. This is consistent with Oliver v. United States, 466 U.S. 170, 180, 104 S.Ct. 1735, 1742 (1984). In the instant case, the Minnesota Court of Appeals analyzes whether an officer violates a person's Fourth Amendment rights by entering the curtilage under a legitimate expectation of privacy standard. The decision applies the factors enumerated in U.S. v. Dunn, 480 U.S. 294, 107 S.Ct. 1134 (1987), namely (1) the proximity of the area to the house; (2) whether the area is included within an enclosure surrounding the house; (3) the nature of the uses of the area; and (4) the steps taken by the resident to protect the area from observation by people passing. Id. at 301, 107 S.Ct. at 1139.

The decision cites numerous consistent decisions by other state courts holding that police do not violate the Fourth Amendment by going on to property to investigate if they restrict their movements to places visitors would be expected to go, such as walkways, driveways, or porches. (App. to Pet. at A-5 to A-6.) The decision notes that the order in which the state courts apply the factors are different than in Dunn, but concludes there is no legal significance to the varying

analytical approaches because both ultimately seek to determine whether a person has a legitimate expectation of privacy in an area. (App. to Pet. at A-6.) As such, the Minnesota Court of Appeals decision does not conflict with decisions of this Court, and the Petition should be denied.

2. The Minnesota Court of Appeals' Holding that the Officer had Justifiable Grounds to Stop Petitioner's Vehicle does not Conflict with Relevant Decisions of this Court

Petitioner argues that this Court should review whether the Trooper had a sufficient basis to initiate the stop of Petitioner's vehicle. Petitioner is unable to cite a single case that is at odds with the decision of the Minnesota Court of Appeals. The case relied upon by Petitioner, Adams v. Williams, 407 U.S. 143, 92 S.Ct. 1921 (1972), supports the decision by the Minnesota Court of Appeals. Adams affirmed the constitutionality of a police stop based on the information of an unnamed informant. In Adams, the officer did not make any personal observation of the suspect prior to the stop. Id. 407 U.S. at 144-5, 19 S.Ct. at 1922-23. The Adams opinion did note that "some tips, completely lacking in indicia of reliability, would warrant no police response or require further investigation before a forcible stop of a suspect would be authorized." Id. 407 U.S. at 147, 19 S.Ct. at 1924. However, the present case is one where there were numerous indicia of reliability.

The 911 caller provided more than ample information to justify the stop of Petitioner's vehicle by the Trooper. After identifying herself, the caller, at the request of the dispatcher, followed the vehicle along a state highway and provided the 911 dispatcher contemporaneous reports of numerous instances of erratic driving behavior by the vehicle, including weaving from side-to-side, moving from left lane to right lane in heavy traffic, driving on the shoulder, and almost hitting

barricades. The dispatcher obtained the caller's name and phone number. The Trooper made visual confirmation of the caller's vehicle being the vehicle following Petitioner. Having received reliable information from a citizen witness, the Trooper would not be fulfilling his duty if he had not attempted to investigate the information provided.

Because the decision of the Minnesota Court of Appeals is consistent with this Court's decisions on the issue, the Petition for Writ of Certiorari should be denied.

3. The Minnesota Court of Appeals' Holding that the Criminal Prosecution Subsequent to the Civil Implied Consent Litigation did not Violate the Due Process Clause is not in Conflict with Relevant Decisions of this Court

Appellant argues that his right to due process has been violated by the City of Eden Prairie, Minnesota's decision to pursue the criminal prosecution of this case after the Minnesota Commissioner of Public Safety's decision to stipulate to dismissal of the civil appeal. According to Petitioner, it is unfair to force him to adjudicate the same issues in the criminal courts. It is noteworthy that the only decision on the disputed evidentiary issue in the implied consent hearing was adverse to Petitioner and denied his motion to suppress.

Petitioner cites California v. Trombetta, 467 U.S. 479, 104 S.Ct. 2528 (1984) as the case which is contrary to the Minnesota Court of Appeals decision. However, there is nothing in Trombetta which bears on this case. The Petition for Writ of Certiorari should be denied.

CONCLUSION

The Minnesota Court of Appeals correctly applied the law as set by this Court. Petitioner disagrees with the result, but does not coherently explain how the application was flawed. For the foregoing reasons, review is not warranted. Respondent respectfully requests that the Petition for Writ of Certiorari be denied.

Dated: August 28, 2000

Respectfully submitted,

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